

**No. 22-15961**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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DONALD J. TRUMP, AMERICAN CONSERVATIVE UNION,  
RAFAEL BARBOSA, LINDA CUADROS, DOMINICK LATELLA,  
WAYNE ALAN ROOT AND NAOMI WOLF,

*Plaintiffs-Appellants,*

v.

TWITTER, INC., AND JACK DORSEY,

*Defendants-Appellees.*

On Appeal from the United States District Court  
for the Northern District of California  
No. 3-21-cv-08378-JD  
Hon. James Donato

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**NAOMI WOLF'S UNOPPOSED MOTION FOR EXTENSION OF TIME  
TO FILE OPENING BRIEF BY 45 DAYS FROM SEPTEMBER 28, 2022**

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**DISCLOSURE STATEMENT**

Pursuant to FRAP 26.1, no disclosure statement is required.

Date: September 12, 2022

JW HOWARD/ATTORNEYS, LTD.

/s/ Scott J. Street

Scott J. Street

*Attorneys for Appellant Naomi Wolf*

## INTRODUCTION

Plaintiff/Appellant Naomi Wolf hereby moves the Court for a 45-day extension of time to file her opening brief in this matter.

## BACKGROUND

This appeal arose out of a civil action filed by former President Donald Trump in Florida. District Court ECF No. 1. Dr. Wolf was not one of the initial plaintiffs. She joined a separate lawsuit filed by former President Trump against YouTube after YouTube blocked some of Trump's content, *Donald Trump et al. v. YouTube et al.*, No. 1:21-cv-22445 (S.D. Fl.). Declaration of Scott J. Street dated September 12, 2022 ("Street Decl."), ¶ 3.

Like this one, the YouTube case was eventually transferred to the Northern District of California, but the judge handling that case denied a motion to consolidate the cases and was considering a motion to dismiss when the District Court issued its dismissal order in this case. *Id.*, ¶ 4. The YouTube case has been stayed pending the outcome of the appeal in this matter. *Id.*

Dr. Wolf joined the case as a plaintiff in December 2021. The District Court dismissed the case without leave to amend on May 6, 2022. District Court ECF No. 165. Among other things, the District Court found that the complaint could not state a First Amendment claim against Twitter for blocking some of its users' content, and ultimately blocking them from Twitter, because Twitter is a private

company and because the amended complaint did not allege facts sufficient to hold Twitter liable under the joint state action doctrine, as “[t]he amended complaint merely offers a grab-bag of allegations to the effect that some Democratic members of Congress wanted Mr. Trump, and the views he espoused, to be banned from Twitter because such content and views were contrary to those legislators’ preferred points of view.” District Court ECF No. 165 at p. 6 (cleaned up). The court said these allegations fell far short of “a rule of decision for which the State is responsible.” *Id.*, cleaned up.

Last month, the non-profit legal group American First Legal Foundation (“AFLF”) released emails it obtained from the federal government pursuant to a FOIA request that show direct coordination between the executive branch and Twitter about blocking certain content, including tweets written by Dr. Wolf. Additional emails were released in late August by the Missouri and Louisiana Attorneys General. Street Decl., ¶ 6. The revelation of those emails led Dr. Wolf to file a motion for an indicative ruling under FRCP 60 in the District Court. *Id.*; District Court ECF No. 176.

## **ARGUMENT**

Pursuant to Circuit Rule 31-2.2, a party may seek an extension of time “by a showing of diligence and substantial need.” There is good cause to grant such relief here.

*First*, Dr. Wolf's opening brief is due on September 28, 2022. But she has sought an indicative ruling from the District Court about whether it would entertain her Rule 60 motion based on newly discovered evidence. District Court ECF No. 176. If the District Court says it would consider the motion, this Court may issue a limited remand pursuant to FRAP 12.1 to enable that. *See Davis v. Yageo Corp.*, 481 F3d 661, 685 (9th Cir. 2007) (describing this process). The Rule 60 motion could moot this appeal, but the District Court is unlikely to issue an indicative ruling, one way or another, before September 28, as the opposition brief has not yet been filed and the briefing will not be completed until later this month. Street Decl., ¶¶ 7-8.

*Second*, regardless of what the District Court says in response to the motion for an indicative ruling, Dr. Wolf recently changed counsel. *Id.*, ¶ 5. Dr. Wolf will be represented by the undersigned counsel going forward, if the appeal continues, but three weeks does not provide sufficient time to review the record and prepare an opening brief. Street Decl., ¶ 9.

*Third*, no party will suffer prejudice from granting this relief. The extension Dr. Wolf seeks is short. It will not delay the appeal, which was only filed in June. The other parties do not oppose the request. Street Decl., ¶ 10. And a short extension will serve the interests of justice, efficiency, and judicial economy.

Given these circumstances, Dr. Wolf respectfully requests that the Court grant the motion and extend her deadline to file her opening appellate brief by 45 days.

Date: September 12, 2022

JW HOWARD/ATTORNEYS, LTD.

/s/ Scott J. Street  
Scott J. Street

*Attorneys for Appellant Naomi Wolf*

### **DECLARATION OF SCOTT J. STREET**

I, Scott J. Street, declare as follows:

1. I am an attorney duly licensed to practice before all courts in the state of California, as well as in this Court. I am of counsel with the law firm JW Howard/Attorneys, Ltd., counsel of record to Plaintiff/Appellant Naomi Wolf in this matter. I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called to do so.

2. This declaration is submitted to support Dr. Wolf's motion for an extension of time to file her opening appellate brief.

3. This appeal arose out of a civil action filed by former President Donald Trump in Florida. Dr. Wolf was not one of the initial plaintiffs. She joined a separate lawsuit filed by former President Trump against YouTube after YouTube blocked some of Trump's content.

4. Like this one, the YouTube case was eventually transferred to the Northern District of California, but the judge handling that case denied a motion to consolidate the cases and was considering a motion to dismiss when the District Court issued its dismissal order in this case. The YouTube case has been stayed pending the outcome of the appeal in this matter.

5. The opening brief in this appeal is due on September 28, 2022. That brief is being written by the attorneys who represent the other Appellants. Those



attorneys have filed a motion to withdraw as Dr. Wolf's counsel. Assuming it is granted, Dr. Wolf will be represented by me and my colleague, John Howard, going forward.

6. On August 26, 2022, our firm filed a motion for an indicative ruling under FRCP 60 in the District Court. That motion is based on emails that were released last month by the non-profit legal group America First Legal Foundation and which show direct coordination between the executive branch and Twitter about blocking certain content, including tweets written by Dr. Wolf. Additional emails were released in late August by the Attorneys General of Missouri and Louisiana.

7. Twitter intends to file an opposition to the motion for an indicative ruling by September 19, 2022. Dr. Wolf may file a reply brief after that.

8. Given the briefing schedule in the District Court, I do not expect the District Court to have ruled on Dr. Wolf's request for an indicative ruling before September 28.

9. Moreover, Mr. Howard and I have just started reviewing the record and need additional time to draft an opening appellate brief for Dr. Wolf, if it is necessary. Under the circumstances, a 45-day extension should provide enough time for the District Court to issue an indicative ruling, which could lead to a



limited remand, and for us to draft an opening brief for Dr. Wolf. I do not expect to ask for any additional extensions.

10. I notified the other Appellants' counsel, as well as Twitter's counsel, of this request. They do not oppose the request for a 45-day extension of time to file the opening brief.

Under penalty of perjury, under the laws of the United States of America, I declare that the foregoing is true and correct. Executed this 12th day of September 2022 at Pasadena, California.



Scott J. Street

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 8. Certificate of Compliance for Briefs**

**9th Cir. Case Number(s) 22-15961**

I am the attorney or self-represented party.

**This brief contains 1,282 words**, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

- ☐ [ ] complies with the word limit of Cir. R. 32-1 and 27-1 as well as the Federal Rules of Appellate Procedure.
- ☐ [ ] is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- ☐ [ ] is an **amicus** brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- ☐ [ ] is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- ☐ [ ] complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):
  - ☐ [ ] it is a joint brief submitted by separately represented parties;
  - ☐ [ ] a party or parties are filing a single brief in response to multiple briefs; or
  - ☐ [ ] a party or parties are filing a single brief in response to a longer joint brief.
- ☐ [ ] complies with the length limit designated by court order dated \_\_\_\_\_.
- ☐ [ ] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

**Signature** \_\_\_\_/s/ Scott J. Street\_\_\_\_\_ **Date** September 12, 2022

**CERTIFICATE OF SERVICE**

I, the undersigned, do declare that I am employed in the county aforesaid, that I am over the age of [18] years and not a party to the within entitled action; and that I am executing this proof at the direction of the member of the bar of the above entitled Court. The business address is:

JW Howard Attorneys LTD  
701 B Street, Ste. 1725  
San Diego, California 92101

☐ MAIL. I am readily familiar with the business' practice for collection and processing of correspondence for mailing via the United States Postal Service and that the correspondence would be deposited with the United States Postal Service for collections that same day.

☒ ELECTRONIC. I am readily familiar with the business' practice for collection and processing of documents via electronic system and said documents were successfully transmitted via Court transmission that same day.

On the date indicated below, I served the within:

**NAOMI WOLF'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO  
FILE OPENING BRIEF BY 45 DAYS FROM SEPTEMBER 28, 2022**

TO:

John P. Coale: <a href="mailto:johnpcoale@aol.com">johnpcoale@aol.com</a>	Peter W. Homer: <a href="mailto:PHomer@homerbonner.com">PHomer@homerbonner.com</a>
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I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and was **EXECUTED** on Sept. 13, 2022, at San Diego, CA.

  
\_\_\_\_\_  
Dayna Dang, Paralegal  
[dayna@jwhowardattorneys.com](mailto:dayna@jwhowardattorneys.com)